

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 636**

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**Introduced by Assembly Member Jones**

February 25, 2009

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An act to amend Section 5387 of, *and to add Section 5387.3 to*, the Public Utilities Code, and to amend Section 13369 of, and to add Section 13369.5 to, the Vehicle Code, relating to charter-party carriers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 636, as amended, Jones. Charter-party carriers: busdrivers.

(1) The Passenger Charter-Party Carriers Act, with certain exceptions, prohibits a charter-party carrier of passengers from engaging in transportation services subject to regulation by the Public Utilities Commission without obtaining a specified certificate or permit, as appropriate, from the commission. The act makes it unlawful, among other things, for the owner of a charter-party carrier of passengers to permit the operation of any vehicle upon any public highway for compensation without having obtained from the commission a certificate or permit, as specified, pursuant to the act.

This bill would require the commission to permanently ~~revoke the authority of~~ *bar from receiving a permit or certificate from the commission* a charter-party carrier that operates a bus without having been issued a permit from the commission, *operates a bus with a suspended permit from the commission, has one or more buses improperly registered with the Department of Motor Vehicles, or that*

knowingly employs a busdriver who has not been issued the required driver's license, endorsement, or certificate to drive a bus ~~and~~. *The bill also* would permanently prohibit a person who drives a bus for a charter-party carrier without having been issued the proper driver's license, endorsement, or certificate from driving a bus of any kind. The bill would ~~also~~ require the Department of Motor Vehicles to refuse to issue or renew, or to suspend or revoke, that person's driving privilege and would ~~also~~ provide that such a person would be permanently ineligible for an endorsement that would permit him or her to drive a bus, as defined. ~~The~~

*The bill would also authorize a charter-party carrier subject to the bar described above that has received a notice of refusal or revocation of its permit to operate or a person who has received a notice of refusal to issue or renew, or a notice of suspension or revocation of, his or her driver's license, endorsement, or certificate pursuant to these provisions, to submit a written request for a specified hearing within 15 days after the mailing of the notice.*

The bill would ~~also~~ require an officer of the Department of the California Highway Patrol who stops or inspects a bus of a charter-party carrier that is operating a bus without having been issued a permit from the commission, *operates a bus with a suspended permit from the commission, or is operating a bus* that is being driven by a driver to whom the appropriate license, endorsement, or certificate has not been issued, to impound the bus. The bill would also prohibit the commission from issuing a new permit to operate a charter-party carrier if an officer, director, or owner of that charter-party carrier was an officer, director, or owner of a charter-party carrier that ~~had its authority to operate as a charter-party carrier permanently revoked by~~ *was permanently barred from receiving a permit or certificate from the commission pursuant to these provisions.*

(2) Under existing law, a violation of the Passenger Charter-Party Carriers Act, or a violation of an order or direction of the commission issued pursuant to the act, is a crime.

Because the provisions of this bill would be a part of the act and because a violation of those provisions or of an order or decision of the commission implementing those provisions would be a crime, the bill would impose a state-mandated local program by creating new crimes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5387 of the Public Utilities Code is  
2 amended to read:

3 5387. (a) It is unlawful for the owner of a charter-party carrier  
4 of passengers to permit the operation of a vehicle upon a public  
5 highway for compensation without (1) having obtained from the  
6 commission a certificate or permit pursuant to this chapter, (2)  
7 having complied with the vehicle identification requirements of  
8 Section 5385, 5385.5, or 5385.6, and (3) having complied with  
9 the accident liability protection requirements of Section 5391.

10 (b) A person who drives a bus for a charter-party carrier without  
11 having been issued the proper driver's license, endorsement, or  
12 certificate shall be permanently prohibited from driving a bus of  
13 any kind, including, but not limited to, a bus, schoolbus, school  
14 pupil activity bus, or transit bus, and from receiving a license or  
15 endorsement that would permit the driving of any bus.

16 (c) (1) A charter-party carrier that (A) operates a bus without  
17 having been issued a permit from the commission ~~or that, (B)~~  
18 ~~operates a bus with a suspended permit from the commission, (C)~~  
19 ~~knowingly employs a busdriver who has not been issued the~~  
20 ~~required license, endorsement, or certificate to drive a bus, or (D)~~  
21 ~~has one or more buses improperly registered with the Department~~  
22 ~~of Motor Vehicles, shall have its authority to operate as a~~  
23 ~~charter-party carrier permanently revoked by the commission. be~~  
24 ~~permanently barred from receiving a permit or certificate from~~  
25 ~~the commission.~~

26 (2) The commission shall not issue a new permit to operate as  
27 a charter-party carrier if any officer, director, or owner of that  
28 charter-party carrier was an officer, director, or owner of a  
29 ~~charter-party carrier that had its authority to operate as a~~  
30 ~~charter-party carrier permanently revoked by the commission~~  
31 ~~charter-party carrier that was permanently barred from receiving~~  
32 ~~a permit or certificate from the commission pursuant to this~~  
33 ~~subdivision.~~

(d) When an officer of the Department of the California Highway Patrol stops or inspects a bus of a charter-party carrier that (1) is operating a bus without having been issued a permit from the commission ~~or that~~, (2) *operates a bus with a suspended permit from the commission*, or (3) *is operating a bus* is being driven by a driver to whom the appropriate license, endorsement, or certificate has not been issued, the bus shall be impounded for 30 days pursuant to the provisions and procedures for the impoundment and release of vehicles under Section 14602.6 of the Vehicle Code. The charter-party carrier shall have a right to a hearing by the impounding agency.

SEC. 2. *Section 5387.3 is added to the Public Utilities Code, to read:*

5387.3. (a) *A charter-party carrier described in subdivision (c) of Section 5387, that has received a notice of refusal or revocation of its permit to operate, may submit to the commission, within 15 days after the mailing of the notice, a written request for a hearing. The charter-party carrier shall furnish a copy of the request to the Department of the California Highway Patrol at the same time that it makes its request for a hearing to the commission. Failure to request a hearing, in writing, within the 15-day period is a waiver of the right to a hearing.*

(b) *Upon receipt by the commission of the hearing request, the commission shall hold a hearing within a reasonable time, not to exceed 21 days, and may appoint a hearing officer to conduct the hearing. At the hearing, the burden of proof is on the charter-party carrier to prove that it is not a charter-party carrier described in subdivision (c) of Section 5387.*

(c) *The refusal to, or revocation of, the permit to operate, may only be rescinded by the hearing officer if the charter-party carrier proves that it was not in violation of subdivision (c) of Section 5387, and that the basis of the refusal or revocation resulted from a factual error.*

~~SEC. 2.~~

SEC. 3. *Section 13369 of the Vehicle Code is amended to read:*

13369. (a) This section applies to the following endorsements and certificates:

(1) Passenger transportation vehicle.

(2) Hazardous materials.

(3) Schoolbus.

1 (4) School pupil activity bus.

2 (5) Youth bus.

3 (6) General public paratransit vehicle.

4 (7) Farm labor vehicle.

5 (8) Vehicle used for the transportation of developmentally  
6 disabled persons.

7 (b) The department shall refuse to issue or renew, or shall  
8 revoke, the certificate or endorsement of any person who meets  
9 the following conditions:

10 (1) Within three years, has committed any violation that results  
11 in a conviction assigned a violation point count of two or more,  
12 as defined in Sections 12810 and 12810.5. The department may  
13 not refuse to issue or renew, nor may it revoke, a person's  
14 hazardous materials or passenger transportation vehicle  
15 endorsement if the violation leading to the conviction occurred in  
16 the person's private vehicle and not in a commercial motor vehicle,  
17 as defined in Section 15210.

18 (2) Within three years, has had his or her driving privilege  
19 suspended, revoked, or on probation for any reason involving  
20 unsafe operation of a motor vehicle. The department may not refuse  
21 to issue or renew, nor may it revoke, a person's passenger  
22 transportation vehicle endorsement if the person's driving privilege  
23 has, within three years, been placed on probation only for any  
24 reason involving unsafe operation of a motor vehicle.

25 (3) Notwithstanding paragraphs (1) and (2), does not meet the  
26 qualifications for issuance of a hazardous materials endorsement  
27 set forth in Parts 383, 384, and 1572 of Title 49 of the Code of  
28 Federal Regulations.

29 (c) The department may refuse to issue or renew, or may suspend  
30 or revoke, the certificate or endorsement of any person who meets  
31 any of the following conditions:

32 (1) Within 12 months, has been involved as a driver in three  
33 accidents in which the driver caused or contributed to the causes  
34 of the accidents.

35 (2) Within 24 months, as a driver, caused or contributed to the  
36 cause of an accident resulting in a fatality or serious injury or  
37 serious property damage in excess of seven hundred fifty dollars  
38 (\$750).

1 (3) Has violated any provision of this code, or any rule or  
2 regulation pertaining to the safe operation of a vehicle for which  
3 the certificate or endorsement was issued.

4 (4) Has violated any restriction of the certificate, endorsement,  
5 or commercial driver's license.

6 (5) Has knowingly made a false statement or failed to disclose  
7 a material fact on an application for a certificate or endorsement.

8 (6) Has been determined by the department to be a negligent or  
9 incompetent operator.

10 (7) Has demonstrated irrational behavior to the extent that a  
11 reasonable and prudent person would have reasonable cause to  
12 believe that the applicant's ability to perform the duties of a driver  
13 may be impaired.

14 (8) Excessively or habitually uses, or is addicted to, alcoholic  
15 beverages, narcotics, or dangerous drugs.

16 (9) Does not meet the minimum medical standards established  
17 or approved by the department.

18 (d) The department may cancel the certificate or endorsement  
19 of any driver who meets any of the following conditions:

20 (1) Does not have a valid driver's license of the appropriate  
21 class.

22 (2) Has requested cancellation of the certificate or endorsement.

23 (3) Has failed to meet any of the requirements for issuance or  
24 retention of the certificate or endorsement, including, but not  
25 limited to, payment of the proper fee, submission of an acceptable  
26 medical report and fingerprint cards, and compliance with  
27 prescribed training requirements.

28 (4) Has had his or her driving privilege suspended or revoked  
29 for a cause involving other than the safe operation of a motor  
30 vehicle.

31 (e) (1) The department shall refuse to issue or renew, or shall  
32 suspend or revoke, the driver's license, endorsement, or certificate  
33 of a person who violates subdivision (b) of Section 5387 of the  
34 Public Utilities Code.

35 (2) A person found to be in violation of subdivision (b) of  
36 Section 5387 of the Public Utilities Code shall be permanently  
37 ineligible for an endorsement that would permit him or her to drive  
38 a bus of any kind, including, but not limited to, a bus, schoolbus,  
39 youth bus, school pupil activity bus, trailer bus, or a transit bus.

1 (f) (1) Reapplication following refusal or revocation under  
2 subdivision (b) or (c) may be made after a period of not less than  
3 one year from the effective date of denial or revocation, except in  
4 cases where a longer period of suspension or revocation is required  
5 by law.

6 (2) Reapplication following cancellation under subdivision (d)  
7 may be made at any time without prejudice.

8 ~~SEC. 3.~~

9 *SEC. 4.* Section 13369.5 is added to the Vehicle Code, to read:

10 13369.5. (a) A person who has received a notice of refusal to  
11 issue or renew, or a notice of suspension or revocation of, his or  
12 her driver's license, endorsement, or certificate pursuant to  
13 paragraph (1) of subdivision (e) of Section 13369 may submit to  
14 the department, within 15 days after the mailing of the notice, a  
15 written request for a hearing. Failure to request a hearing, in  
16 writing, within 15 days is a waiver of the right to a hearing.

17 (b) Upon receipt by the department of the hearing request, the  
18 department may stay the action until a hearing is conducted and  
19 the final decision is made by the hearing officer. The department  
20 shall not stay the action when there is reasonable cause to believe  
21 that the stay would pose a threat to a member of the motoring  
22 public who may require the services of a charter-party carrier.

23 (c) A person whose driver's license, endorsement, or certificate  
24 has been refused or revoked pursuant to paragraph (1) of  
25 subdivision (e) of Section 13369 is not entitled to a hearing  
26 whenever the action by the department is made mandatory by this  
27 article or any other applicable law or regulation.

28 (d) Upon receipt of a request for a hearing, and when the  
29 requesting party is entitled to a hearing under this article, the  
30 department shall appoint a hearing officer to conduct a hearing in  
31 accordance with Section 14112.

32 ~~SEC. 4.~~

33 *SEC. 5.* No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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